
PASSIVE EUTHANASIA & ITS RELEVANCE WITH JURISPRUDENCE: A CRITICAL ANALYSIS

Anukriti Giri, University School of Law & Legal Studies, GGSIPU, New Delhi.

ABSTRACT

This research paper examines and critically analyse Passive Euthanasia through the lens of various schools of thought of Jurisprudence. By examining and thoroughly discussing the landmark case of Aruna Shanbaug, the research tries to determine how four major jurisprudential frameworks—Natural Law, Positive Law, Sociological School, and Dworkin's Law as Integrity—approached the questions raised by this case. The Natural Law school of thought highlighted the tension between the sanctity of life and inherent human dignity when consciousness is permanently lost. The Positive Law perspective confronted the challenge of interpreting existing criminal prohibitions against suicide and assisted death in the context of modern bioethical dilemmas. The Sociological School laid its emphasis upon balancing individual welfare with broader social implications, while Dworkin's Law as Integrity offered a framework for constructive interpretation of constitutional principles to address ethical challenges.

Furthermore, the research paper tries to analyse the critical medical ethics and considerations like informed consent, beneficence, safeguards to prevent potential misuse of passive euthanasia. By balancing diverse jurisprudential perspectives, the Court adopted an approach that respects the complexity of human existence and demonstrates how legal systems can evolve to address emerging bioethical challenges by also making sure that principles of human dignity and justice are not compromised.

Introduction:

Euthanasia, commonly known as mercy killing, is a method of putting someone to die without suffering. This act allows a person who has a terrible, terminal illness to pass away by stopping treatment or turning off artificial life support systems. As per the Article 21¹ of the Indian Constitution, no one may be deprived of their life or freedom unless they follow the legal process. The word "euthanasia," implies "good death," and it finds its origin in Greek history. The wish for an early death has become a topic of discussion among various people in the contemporary times. This discussion covers a wide range of societal issues, including the law, ethics, human rights, religion, health, social, and cultural issues, among others.²

When a person is born, he naturally gets some birth rights attributed to him on the reasoning of him being born. One of the most fundamental rights is the Right to Life, without which no other right can be exercised. As per the Indian Constitution, the Right to Life means the Right to live in Dignity as well. This also includes within its ambit the man's right to a dignified death. The phrase "right to die with dignity" should not be confused with the right to an unnatural death that reduces one's lifespan. As a result, the debate about the right to life is vital for debate over euthanasia. Authorising the Right to Die or euthanasia has been one of the contentious subjects in recent years for the judicial systems of various nations. The concept of the right to life thus becomes central to the debates and discussions surrounding euthanasia. The authorization of the Right to Die or euthanasia has emerged as one of the most contentious and morally complex challenges in recent decades, challenging our fundamental understanding of autonomy, compassion, medical ethics, and the sanctity of life. This debate has intensified as medical technology has developed, enabling the prolongation of life even in circumstances where quality of life is severely compromised and suffering is profound.

The euthanasia discourse transcends simple binary perspectives, involving intricate questions about human dignity, patient autonomy, the Hippocratic oath, familial considerations, resource allocation in healthcare systems, and the proper role of the state in matters of life and death. Different nations and cultures have approached these questions with varying legal frameworks, reflecting their unique historical, religious, and philosophical traditions. As societies continue

¹ INDIA CONST. art. 21.

² ScienceDirect, <https://www.sciencedirect.com/topics/nursing-and-health-professions/passive-euthanasia> (last visited on May 3, 2025).

to grapple with these profound questions, the euthanasia debate remains at the centre of our most deeply held values concerning life, death, suffering, and individual freedom.

Historical Background:

The Greek words "Eu" (which means good) and "Thanatos," which signifies death, are the origin of the word "euthanasia." Euthanasia implies giving a person decent death. Euthanasia is essentially active death.³ The idea behind euthanasia is that it would allow the patient to experience a "good death" rather than condemning them to a painful, slow, or inhumane demise. According to historians, there was a practice on the island of Ceos whereby extremely elderly people who had outlived their usefulness to society would gather once a year to partake in a poisonous ritual. It was customary for public officials to have a supply of toxic substances available for anyone who could justify his wish for death before the Senate in one of Greece's oldest colonies, as well as in Athens and Ceos.⁴

Types Of Euthanasia:

- Active euthanasia: Active euthanasia means killing someone by giving any active means. It is done when the patient demands that his or her life to be terminated by using different means such as by giving lethal injection, by drugs etc.
- Passive euthanasia: Passive euthanasia involves the killing of a person by voluntary termination of life supporting equipment or medical measures such as ventilator; feeding tubes etc. This is generally used when the given equipment is neither improving a patient's health nor promising a longer and quality life.
- Voluntary euthanasia: Voluntary euthanasia means when the patient expressly requests to be killed. It is a form where euthanasia is performed with a person's consent. This has been legalised in states like Belgium, Netherlands etc.⁵

³ Ignazio Vecchio, *Brief history of euthanasia and the contribution of medical and surgical ethics to the cultural debate*, (September 26, 2012), <https://www.iris.unict.it/retrieve/dfe4d227-2054-bb0a-e053-d805fe0a78d9/brief%20history%20pdf.pdf>.

⁴ Ignazio Vecchio, *Brief History Of Euthanasia And The Contribution Of Medical And Surgical Ethics To The Cultural Debate*, (September 26, 2012), <https://Www.Iris.Unict.It/Retrieve/Dfe4d227-2054-Bb0a-E053-D805fe0a78d9/Brief%20history%20pdf.Pdf>.

⁵ BBC, <https://Www.Bbc.Co.Uk/Ethics/Euthanasia/Overview/Forms.Shtml>(last Visited On May 5, 2025).

- Non voluntary euthanasia: Non voluntary euthanasia means the condition where the patient can't give their assent because they are in an unconscious state. This has also within its ambit ill infants, old age people and the people who are severely disabled. In this case another person makes a decision on their behalf, this person can be their relative, legal officer etc. on the ground that the ill individual had communicated a wish beforehand to take their life in such conditions.⁶
- Involuntary euthanasia: Involuntary euthanasia happens when an individual can give consent to their death yet doesn't do so on the grounds that they are either not asked or in light of the fact that they are asked yet need to live and if the patient is killed anyway, it is an involuntary euthanasia. It is also marked as murder.

Aruna Ramchandra Shanbaug Vs. Union of India and Others 2011 INSC 187:

This case serves as one of the most profound legal and ethical dilemmas in Indian jurisprudential theory. A woman named Aruna Shanbaug was a nurse at the prestigious King Edward Memorial Hospital in Mumbai. One day, she fell victim to a brutal assault perpetrated by a hospital employee who worked there as a sweeper. The assailant, with a mala fide intent, attempted to restrain her by wrapping a dog chain around her neck violently. His initial intention was to rape her but when he got to know that she was menstruating at that time he proceeded to sodomize her by simultaneously strangulating her neck with the help of a metal chain with a considerable amount of force.⁷

The next morning in a horrific scene, a cleaning staff member discovered Aruna in an unconscious state with severe injuries throughout her body. Upon medical examination, it was discovered that prolonged strangulation critically interrupted oxygen supply to her brain resulting in irreversible cerebral damage. She was declared as “virtually dead” by the medical reports as well as experts. As per medical experts, she was in a Permanent Vegetative State known as PVS.

⁶ Kishan Gupta, Ishita Chaturvedi, *The Critical Analysis Of Passive Euthanasia As A Converging Need In India*, (August 9, 2022), <https://Articles.Manupatra.Com/Article-Details/The-Critical-Analysis-Of-Passive-Euthanasia-As-A-Converging-Need-In-India>.

⁷ Aishwarya Agrawal, *Aruna Ramchandra Shanbaug Vs. Union Of India (Aruna Shanbaug Case Summary)*, (December 1, 2023), <https://lawbhoomi.com/aruna-shanbaug-vs-union-of-india/>.

Even after a lot of years her condition showed no improvement and she was just like a skeleton. She remained confined to her hospital bed at KEM Hospital for a period spanning to 36 years. Thus, finally, a petition was filed under Article 32⁸ for her Right to Life and Personal Liberty under Article 21 by Ms. Pink Virani who was a friend of the victim to permit for the termination of Aruna Shanbaug's life and let her die peacefully with her own wish. This petition provided a breakthrough to one of India's most relevant legal debates and discussions on the intersection of the right to life, dignity in death, and the ethical boundaries of medical intervention in cases of irreversible vegetative states.

Judgement:

The Hon'ble Apex Court made a clear differentiation between active and passive euthanasia. Active means positive as well as deliberate termination of life through some lethal substances. On the other hand passive involves withdrawal of life-support systems or medical treatment. The major difference is that "active" involves a deliberate action to end life, while "passive" contemplates the omission of an action.

Maximum of the nations in the world have declared active euthanasia as crime. India as well under Section 302 (2)⁹ and 304 (3)¹⁰ of the Indian Penal Code criminalises it. In addition to this, under Section 309 (4)¹¹, physician- assisted suicide is also criminalised under the Code.¹²

The Supreme Court provided guidelines for passive euthanasia which can only be permitted and used in the "rarest of rare circumstances" by rejecting the plea of petitioner. It observed that such decisions can be made by High Court under Article 226¹³. The procedure laid down by the SC is that when an application regarding the same is received, the Chief Justice of the respective HC shall constitute a bench before which a committee of at least 3 reputable doctors should be referred. A thorough examination of the patient should take place and the state and family of the applicant shall be given notice issued by the bench. The High Court is expected to make a quick decision without further delaying the application.

⁸ INDIA CONST. art. 32.

⁹ Indian Penal Code, 1860, S. 302 (2), No. 45, Acts of Parliament, 1860 (India).

¹⁰ Indian Penal Code, 1860, S. 304 (3), No. 45, Acts of Parliament, 1860 (India).

¹¹ Indian Penal Code, 1860, S. 309 (4), No. 45, Acts of Parliament, 1860 (India).

¹² Aishwarya Agrawal, Aruna Ramchandra Shanbaug Vs. Union Of India (Aruna Shanbaug Case Summary), (December 1, 2023), <https://lawbhoomi.com/aruna-shanbaug-vs-union-of-india/>.

¹³ INDIA CONST. art. 226.

Comparative Analysis of Jurisprudential Thoughts with Reference to Aruna Shanbaug Case:

Natural School of Thought:

The natural law school of thought emphasizes the existence of universal, inherent and irreversible rights and moral principles that are not created by human laws but are discovered through reason and nature as a man being a natural prudent being. The Aruna Shanbaug case raised fundamental questions about natural law views and principles surrounding the right to life, the right to die, and the limits of state intervention in individual autonomy. Jurists and scholars advocating for termination argued that prolonging life in a vegetative state is inhumane and violates the individual's right to a dignified death. Opponents on the other hand, argued that the state has a duty to preserve life, regardless of the quality of life. The Hon'ble Supreme Court's decision showcases a complex balancing act between upholding the right to life and respecting individual autonomy and the potential for a dignified death.¹⁴

The Aruna Shanbaug case has had significant ethical and philosophical implications, contemplating discussions about the nature of human rights, the role of compassion, and the limits of medical intervention in cases of terminal illness.

Positive School of Thought:

Positive school of thought is something which is considered to be completely different from the natural school. The natural school which lays emphasis upon the morals, ethics and what the law should be is exactly contrasting to the positive school which is emphasising upon taking law as it is and not what it should be. John Austin, a prominent Jurist of this school of law quoted about law to be a command of the sovereign that has to be adhered to as it is and it is backed by punishments in cases when people do not follow what has been exactly laid down by the sovereign. Hart, another significant Jurist in this school lays down that a law will only be considered to be valid when it will be made by a proper and streamlined procedure. This school's approach advocates that a recorded i.e., written, formal and coded law lays down the rights and duties of a citizen of that particular State as well as the judges also need to interpret

¹⁴ Rohini Shukla, *Passive Euthanasia in India: a critique*, IJME (August 5, 2015), <https://ijme.in/articles/passive-euthanasia-in-india-a-critique/?galley=html>.

the law as it is exactly in the written form while providing the citizens with any judgement or decision.

By taking both the views of Austin and Hart into discussion it can be deduced that a law cannot be declared invalid by the judges merely because that law does not go well with their personal moral beliefs and ethics. In a theoretical sense, one may refer these two schools as completely different, rather in the circumstances surrounding the instant case of Aruna Shanbaug, both these schools provide reasoning which will make the judgment similar if followed through any of the approaches.¹⁵ The judges' mind was also influenced by the positive approach and this can be concluded from the fact that they delivered the judgment because under IPC section 300 and 307 both murder and suicide are criminalised i.e, they took the law as it is written down exactly. The judges' took the presumption that the right to life will not include within its ambit, the right to die, and hence, even if they think and believe as per their moral turpitudes that Aruna Shanbaug should be allowed to die peacefully, this school would not permit them to do so. It can be deduced from the instant case that nevertheless laws should be appreciated and given respect and natural rights should be respected in every case, but citizens should also have the 'right to die' with their own will and with dignity in cases of them being at the stage of no hope of living or being terminally ill. This was prominently proved and showcased by the recognition of state approved passive euthanasia.

Sociological School:

The concept of sociological school of thought developed post the industrial revolution stage. The main intent behind the growth of this school was to make a society where both the welfare of the individual and society are present and maintained. This approach did not devote its thinking towards any moral or ethical belief or the towards the purpose of law but towards the circumstances which occur in the society due to legal actions and steps and changes. The theory was developed to prevent the interests and benefits of the society as a whole and advocate against the traditional purpose of law i.e., a command from a single authority in the state, or as a complete bundle of explicit proposals formed by concise and direct clarification, to all rights and clashes of interest. The main aim and motto of this school is to make sure that the increasing problems of the society are minimised by applying various techniques including the legal and

¹⁵ Ananya Soni, *A Jurisprudential and Systemic Analysis of Active Euthanasia in India* (Mar 8, 2022), <https://articles.manupatra.com/article-details/A-Jurisprudential-and-Systemic-Analysis-of-Active-Euthanasia-in-India>.

extra-legal means and eventually coordinating between varying interests of individual and society and balancing them gradually.¹⁶

Different Jurist Theory in Sociological School:

- Rudolf von Ihering: He expressed law as a means to accomplish the needs of all the people in the society. He emphasised upon the fact that a man performs and behaves in a certain manner for achieving some sort of degree and position in the society and therefore, law becomes the way for fulfilling people's needs.
- Montesquieu: He was a French philosopher who became the first scholar to understand the influence of the society on the legal systems of the country. He saw law as something which should be seen in a way to the situation which is there in any country and it should not be static and must keep on changing with the prevailing circumstances of any society.

In the present situation, by the application of the sociological school, it can be deduced that Aruna was in a permanent vegetative state (PVS) and was completely on a bed rest in a hospital for the last 36 years thereby, contesting her to die peacefully as there is no scope of improvement in her situation as backed by medical reports and experts. By observing through the lens of sociological approach, the right to die should be given to such patients so that they get free from a constant suffering and this will be for their own interest. Since the main aim in this school is the welfare of society and individuals while balancing both interests, it also tries to promote the present law. Hence, when it follows the law as it is prevailing, it won't allow the Right to Die.

Ronald Dworkin: Law as Integrity:

This concept advocates that the law must be deduced in a manner that the judges take the law only as per the rationality, reasonableness and justice and eventually and basically the due process of law. Whenever a case comes before the judges, they need to apply these principles and rationale making sure that the decision is just, fair and unbiased by the equal treatment of

¹⁶ Ananya Soni, *A Jurisprudential and Systemic Analysis of Active Euthanasia in India* (Mar 8, 2022), <https://articles.manupatra.com/article-details/A-Jurisprudential-and-Systemic-Analysis-of-Active-Euthanasia-in-India>.

all the human beings. This concept includes both legislative and adjudicative principles. Legislative principle involves the procedure of making of law and making sure that it aligns morally and is valid as per the nation's ideals, ethics and beliefs. Dworkin's theory tries to lay down a theory of adjudication and it is integral in his theory to involve a constructive interpretation of legal exercise. Constructive interpretation involves the construing of social practices. It implies that the judges should use those techniques in practice while laying down the decisions of a case that they consider while interpreting the statutes as well as while taking into account the previous precedents not merely them being as a part of the legal system but as ideologies. They should try to make them more righteous in a political sphere by improving them. Judges cannot and they should not make or turn their working theory so articulate and concrete it leaves no room for new and different opinions in future due to some change in the circumstances.¹⁷

Additionally, he urges to try to interpret law in such a way as it is ought to be made thereby, making sure that justice has been served eventually. In the cases of Euthanasia, the law as per the written and codified as present in the Constitution i.e., Right to Life does not include in it right to die. Here, a constructive interpretation can be made by the judges and by applying the theory of law as integrity it opens a room for the adjudicator allowing them to make decisions by applying the procedure as from which integrity was construed i.e., by constructive interpretation. The judges can use by-laws to support this case and the same approach was adopted in some way and passive euthanasia was permitted by the State.

Medical Ethics:

The Hon'ble Supreme Court dealt with the rules of informed consent and right to the bodily integrity of the patient after a landmark Nancy Cruzan case¹⁸ of the US. Informed Consent is the one wherein the patient is fully aware of all the future courses of his treatment, his chances of recovery, and all the side effects of all of these alternative courses of treatment. If a person is capable of giving a completely informed consent and he is still not asked, the physician can be prosecuted for assault, battery, or even culpable homicide. The concept of informed consent comes into play only when the patient is able to understand the results and aftermath of her

¹⁷ Law Explorer, <https://lawexplores.com/dworkins-law-as-integrity/> (last visited on May 4, 2025).

¹⁸ Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261 (1990).

treatment or has earlier when in sound conditions made a declaration.¹⁹

In this case of Aruna Shanbaug, the consent of Aruna could not be obtained and thus, the question as to who should decide on her behalf became more prominent. This was decided by beneficence. Beneficence means and implies acting in the patient's best interest. Acting in the patient's best interest means following a course of action that is best for the patient, and is not influenced by personal convictions, motives or other considerations. Public interest and the interests of the state were also considered. The mere legalisation of euthanasia could lead to a wide spread misuse of the provision and thus, the court looked at various jurisprudences to evolve with the safeguards.

Conclusion:

The case of Aruna Shanbaug represents a breakthrough in Indian jurisprudence, marking a profound evolution in the legal understanding of euthanasia and the right to die with dignity. Through the in- depth analysis of various jurisprudential schools of thought, one can appreciate and understand the multifaceted dimensions of this landmark case and its far-reaching implications for medical ethics, individual autonomy, and state responsibility.

While natural law traditionally upholds the sanctity of life, it equally recognizes the dignity intrinsic to human existence. In Aruna's case, the prolonged vegetative state without any prospect of recovery posed a fundamental question: Does the natural right to life necessarily include a life devoid of consciousness and dignified existence? The court's recognition of passive euthanasia in specific circumstances acknowledges that natural rights must be interpreted not merely as the right to biological existence but as the right to a life with essential human dignity.²⁰

Secondly, the Positive school, with its focus on law as it is rather than what it ought to be, presented a significant challenge in Aruna's case. The existing legal framework in India criminalized both suicide and assisted death. However, the court showcased the application of judicial mind by distinguishing between active and passive euthanasia, thereby creating a nuanced interpretation of existing law without undermining its foundational principles. This

¹⁹ Mounica Kasturi, *Aruna Ramchandra Shanbaug v. Union Of India: Case Analysis* (Jan 7, 2015) <https://www.lawctopus.com/academike/aruna-ramchandra-shanbaug-v-union-of-india-case-analysis/>.

²⁰ Rohini Shukla, *Passive Euthanasia in India: a critique*, IJME (August 5, 2015), <https://ijme.in/articles/passive-euthanasia-in-india-a-critique/?galley=html>.

approach revealed that even within the constraints of positivist jurisprudence, there exists space for humane interpretation that responds to complex ethical dilemmas without abandoning legal certainty.

Furthermore, the Sociological School's views and approach of balancing individual welfare and social welfare both provided another significant perspective. By examining the societal implications of euthanasia, the court had to navigate between individual autonomy and potential social consequences. The decision to permit passive euthanasia under strict judicial supervision represents a careful equilibrium between respecting individual suffering and preventing potential abuse. This balancing act exemplifies the sociological approach's recognition that law must evolve with societal needs while maintaining essential safeguards.

Additionally, Ronald Dworkin's theory of Law as Integrity offered the most sophisticated approach and methodology for understanding the court's reasoning. By engaging in constructive interpretation of constitutional principles, particularly Article 21's right to life, the court widened its meaning to encompass dignity in death. This interpretive view allowed the judges to maintain legal coherence while adapting principles to address unprecedented ethical challenges. The recognition of passive euthanasia as constitutionally permissible demonstrated judicial integrity in action – respecting precedent while evolving doctrine to meet new moral imperatives.

Moreover, the medical ethics dimension introduced critical considerations about informed consent, patient autonomy, and beneficence. By establishing protocols for surrogate decision-making and emphasizing the patient's best interests, the court created a framework that respects medical professionals' ethical obligations while preventing potential abuses. The requirement for judicial approval before passive euthanasia can be performed represents a safeguard that acknowledges both the gravity of end-of-life decisions and the necessity for legal oversight.

The Aruna Shanbaug case ultimately transcends its specific circumstances to address fundamental questions about human existence – the meaning of life, the nature of dignity, and the limits of medical intervention. The recognition of passive euthanasia under certain conditions, the Indian legal system acknowledged that dignity may sometimes require the termination of futile medical treatment. This recognition does not diminish the sanctity of life but rather affirms that human dignity extends beyond mere biological existence to encompass meaningful consciousness and autonomy.

In concluding remark, the Aruna Shanbaug case represents an extraordinary instance of judicial wisdom in navigating the complex intersection of law, medicine, ethics, and human dignity. It reminds us that jurisprudence at its finest does not merely apply abstract principles but engages deeply with the profound questions of human existence and compassion. Through this landmark precedent, Indian jurisprudence has made a vital contribution to the global discourse on euthanasia, demonstrating how legal systems can evolve to address emerging bioethical challenges while remaining faithful to enduring principles of human dignity and justice.